



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,549	12/04/2003	James Hammer	1342-66940	8784
24197 7590 06/15/2007 KLARQUIST SPARKMAN, LLP 121 SW SALMON STREET SUITE 1600 PORTLAND, OR 97204			EXAMINER PLUMMER, ELIZABETH A	
			ART UNIT 3635	PAPER NUMBER
			MAIL DATE 06/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/728,549		HAMMER, JAMES	
	<b>Examiner</b>		<b>Art Unit</b>	
	Elizabeth A. Plummer		3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-17,21-31 and 35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-17, 21-31, and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/16/2007</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

Applicant's amendments and arguments received 03/16/2007 have been entered and considered. Claims 4, 18-20 and 32-34 have been canceled. An examination of pending claims 1-3, 5-17, 21-31 and 35 is herein presented.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3, 5-17, 21-31 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by the WestblockSystems information (WS), including:

2-WS: WestblockSystems, "GravityStone, So Simple, It's Advanced," Contractor's Manual, pages 15-17 (cited by applicant, listed second under Other Documents on the IDS filed 12 March 2004)

3-WS: WestblockSystems, "GravityStone, So Simple, It's Advanced," product brochure, 4 pages (cited by applicant, listed third under Other Documents on the IDS filed 12 March 2004)

4-WS: WestblockSystems, "GravityStone, So Simple, It's Advanced," product brochure, 2 pages (cited by applicant, listed fourth under Other Documents on the IDS filed 12 March 2004)

a. Regarding claim 1, The WS disclosure comprises a retaining wall inherently having a front and back, the wall comprising: a first set of courses (at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts a four foot layer of M.S.E. Fat Face/Mini-Cells; at 4-WS at page 1/2: a Fat Face is depicted as a unitary block) comprising a plurality of unitary blocks placed side by side and

extending in a depth direction and not connected to other blocks in the depth direction; and a second set of courses (at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts an eight foot layer of Modulares; at 4-WS at page 2/2: a modular is depicted as a mini cell, single cell, or multi cell block assembly comprising at least two interconnected block components, i.e., face, trunk, anchor components); wherein the first set of courses is above or below the second set of courses (at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts the first set of M.S.E. courses above the second set of modular courses). Further, at 2-WS at page 16, the third paragraph of section 2.3.4 mentions that the systems (M.S.E. and modular) are combined on the same wall for the most cost-effective wall system. As noted at 3-WS at the bottom of page 2/4: the wall is used in combination with a GeoGrid or tie-back sheet and the second and third bullets on the same page mention geosynthetic reinforcement that inherently is located behind the wall where the fill material to be reinforced is located.

b. Regarding claim 2, as mentioned with regard to claim 1, at 3-WS at the bottom of page 2/4: the first set of M.S.E. Fat Face unitary courses is located above the second set of Modular block assembly courses.

c. Regarding claim 3, at 3-WS at the bottom of page 2/4: the first set of M.S.E. Fat Face unitary courses is located below the set of Single Cell block assembly courses above the twelve foot line.

- d. Regarding claim 5, at 4-WS at page 2/2: the diagrams at the top of the page depict the block assembly comprising a face block, anchor block, and trunk block connected to the face block and anchor block.
- e. Regarding claim 6, at 4-WS at pages 1/2 and 2/2: the diagrams depict dovetail connectors on the face block, trunk block, and anchor block.
- f. Regarding claim 7, at 4-WS at the top right corner of page 2/2: the diagram depicts a block assembly (multi cell) that includes, from right to left, a face block, a first trunk block rearwardly from the face block; a first anchor block connected to the first trunk block opposite the face block; a second trunk block extending rearwardly from the first anchor block; and a second anchor block connected to the second trunk block opposite the first anchor block.
- g. Regarding claim 8, at 4-WS at the right column of page 1/2: the top figure depicts a unitary block (Fat Face block) that comprises a front portion, two wall portions, a rear portion, and a core defined by the front portion, wall portions, and rear portions.
- h. Regarding claim 9, at 3-WS at the Components section on page 3/4: the Fat Face and Standard Face diagrams depict block-connecting elements that connect adjacent courses of block.
- i. Regarding claim 10, at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts a four foot layer of M.S.E. Fat Face/Mini-Cells, which inherently includes at least an upper and lower course of unitary blocks that are approximately eight inches high as shown on page 3/4. At 3-WS at the bottom of

page 2/4: the diagram of a Fill Site depicts an eight foot layer of Modulares, which includes at least an upper and lower course of block assemblies that are approximately eight inches high as shown on page 3/4.

j. Regarding claims 11-13, at 3-WS at page 3/4: the schematic diagram of the Wall Assembly depicts the offset arrangement of adjacent courses.

k. Regarding claim 14, at 3-WS at page 3/4: the diagrams of the components show the depth of each particular course being the depth of the wall, and each block assembly has a depth that is greater than the depth of the unitary blocks.

l. Regarding claim 15, at 4-WS at the top of page 2/2: the diagrams depicting the block assemblies and at 3-WS at page 3/4: the wall assembly diagram depicts the chambers defined between trunk block and/or anchor block horizontally adjacent block assemblies.

m. Regarding claim 16, at 4-WS at the Components Fat Face diagram at page 3/4: the unitary block (fat face) inherently includes chambers between the wall portions of horizontally adjacent unitary block.

n. Regarding claim 17, The WS disclosure comprises a retaining wall inherently having a front and back, the wall comprising: a plurality of courses (at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts a four foot layer of M.S.E. Fat Face/Mini-Cells; at 4-WS at page 1/2: a Fat Face is depicted as a unitary block) at least a portion comprising unitary blocks placed side by side and having a front surface at the front of the wall and a back surface at the back of the wall (note for example at 3-WS the Wall Assembly diagram at page 3/4 that

Art Unit: 3635

depicts each mini-cell extending from the front of the wall to the back of the wall and that the mini-cell and fat face are substitutable for each other as mentioned at 3-WS the Fill Site diagram at page 2/4); and a plurality of courses (at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts an eight foot layer of Modulares), at least a portion comprising block assemblies placed side by side (note for example at 3-WS the Wall Assembly diagram at page 3/4) and each block assembly comprising at least a first block and a second block extending rearwardly therefrom (at 4-WS at page 2/2: a modular is depicted as a mini cell, single cell, or multi cell block assembly comprising at least two interconnected block components, i.e., face, trunk, anchor components); wherein courses having unitary blocks are located above or below courses having block assemblies (at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts the Fat Face unitary courses above the lower Modular courses). Further, at 2-WS at page 16, the third paragraph of section 2.3.4 mentions that the systems (M.S.E. and modular) are combined on the same wall for the most cost-effective wall system. Also, at 3-WS at the bottom of page 2/4: the first set of M.S.E. Fat Face unitary courses is located above the second set of Modular block assembly courses. Also, as noted at 3-WS at the bottom of page 2/4: the wall is used in combination with a GeoGrid or wall-reinforcing sheet and the second and third bullets on the same page mention geosynthetic reinforcement that inherently is located behind the wall where the fill material to be reinforced is located.

Art Unit: 3635

- o. Regarding claim 21, at 3-WS at page 3/4: the diagrams of the components show the depth of each particular course being the depth of the wall, and each block assembly has a depth that is greater than the depth of the unitary blocks.
- p. Regarding claim 22, at 4-WS at page 2/2: the diagrams at the top of the page depict the block assembly comprising a generally I-shaped assembly having front or face block, rear or anchor block, and trunk block connected to the front block and rear block.
- q. Regarding claim 23, at 4-WS at page 2/2: the wall is shown where each course is set back to form a sloped wall face.
- r. Regarding claims 24 and 25, at 4-WS at the bottom of page 1/4: the GravityStone Specifications mention that the fat face or unitary block has the same width and height of approximately eighteen inches by eight inches, respectively, as the thin face or front block of the block assembly.
- s. Regarding claim 26, The WS disclosure comprises a retaining wall inherently having a front surface and back surface, the wall comprising:
  - a plurality of courses (at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts a four foot layer of M.S.E. Fat Face/Mini-Cells; at 4-WS at page 1/2: a Fat Face is depicted as a unitary block) a portion of each comprising single blocks placed side by side and having a front surface at the front surface of the wall and a back surface at the back surface of the wall (note for example at 3-WS the Wall Assembly diagram at page 3/4 that depicts each mini-cell extending from the front of the wall to the back of the wall and that the mini-cell and fat face



are substitutable for each other as mentioned at 3-WS the Fill Site diagram at page 2/4); at least one tie-back sheet between single blocks in adjacent courses (as noted at 3-WS at the bottom of page 2/4: the wall is used in combination with a GeoGrid or tie-back sheet and the second and third bullets on the same page mention geosynthetic reinforcement and at 2-WS at the M.S.E. diagram at top of page 16, the tie-back sheet is between adjacent courses – a common practice in retaining wall construction); a plurality of different courses (at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts an eight foot layer of Modulares), a portion of each comprising block assemblies placed side by side (note for example at 3-WS the Wall Assembly diagram at page 3/4) and each block assembly comprising a front or face block, at least one elongated trunk block extending rearwardly therefrom, and at least one anchor block connected to the trunk block and opposite the front block (at 4-WS at page 2/2: a modular is depicted as a mini cell, single cell, or multi cell block assembly comprising at least two interconnected block components, i.e., face, trunk, anchor components), wherein courses having single blocks are located above or below courses having block assemblies (at 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts the Fat Face single courses above the lower Modular courses). Further, at 2-WS at page 16, the third paragraph of section 2.3.4 mentions that the systems (M.S.E. and modular) are combined on the same wall for the most cost-effective wall system.

- t. Regarding claim 27, at 4-WS at pages 1/2 and 2/2: the diagrams depict dovetail connectors on the face block, trunk block, and anchor block.
- u. Regarding claim 28, at 4-WS at the top of page 2/2: the diagrams depicting the block assemblies and at 3-WS at page 3/4: the wall assembly diagram depicts the chambers defined between trunk block and/or anchor block horizontally adjacent block assemblies.
- v. Regarding claims 29 and 30, as depicted in the diagrams, the method of constructing a retaining wall inherently includes the recited steps of forming one course of single blocks having a depth extending in a direction from the front to the back of the wall and is not connected to other blocks in the direction of the block depth, the depth of the wall and forming a different course of block assemblies having at least two interlocking block components. A wall is inherently built from bottom to top. Looking to 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts the Fat Face single courses above the lower Modular courses so the limitations of claims 29 and 30 are met by forming M.S.E. Fat Face or single block course on top of or after forming the Modular or block assembly course. As noted at 3-WS at the bottom of page 2/4: the wall is used in combination with a GeoGrid or tie-back sheet and the second and third bullets on the same page mention geosynthetic reinforcement that inherently is located behind the wall where the fill material to be reinforced is located.
- w. Regarding claim 31, looking to 3-WS at the bottom of page 2/4: the diagram of a Fill Site depicts the Fat Face single courses below the M.S.E.

Art Unit: 3635

Single-Cell block assembly courses so the limitations of claim 31 is met by forming M.S.E. Fat Face or single block course below or before forming the M.S.E. Single-Cell block assembly course.

x. Regarding claim 35, a 4-WS page 2/2: the wall forming step is comprised of assembling a plurality of block components and forming a course from a plurality of block assemblies.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 8-10 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorheim et al. (US Patent 5,820,304) in view of Egan et al. (US Patent 6,287,054).

a. Regarding claim 1, Sorheim et al. discloses a retaining wall having a front and a back (Fig. 4), the wall comprising a first set of a plurality of courses (Fig. 4), at least a portion of each comprising a plurality of unitary blocks (9) placed side-by-side with respect to each other, wherein each unitary block has a depth extending in a direction from the front to the back of the wall and is not connected to other blocks in the direction of the block depth (column 4, lines 65-68); and a second set of a plurality of courses, at least a portion of each comprising a

Art Unit: 3635

plurality of block assemblies placed side-by-side with respect to each other, each block assembly comprising at least two interconnected block components (column 4, lines 49-53); wherein the first set of courses comprises at least first and second courses of unitary blocks (column 5, lines 57-60). Sorheim et al. does not disclose a tie-back sheet is positioned between the first and second courses of the first set and the tie-back sheet extends rearwardly into fill material retained behind the wall. However, it is notoriously well known in the art of retaining walls that tie-back sheets can be positioned between first and second courses and can extend into fill material retained behind the wall. For example, Egan et al. teaches a tie-back sheet (90) positioned between first and second courses (Fig. 10,11,12) that extends into fill material (Fig. 12) positioned behind the wall (100) (Fig. 12; column 6, lines 22-26)) in order to reinforce the wall. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Sorheim et al. to use a tie-back sheet between first and second courses, the sheet extending into fill material behind the wall, such as taught by Egan et al.; in order to make a stronger retaining wall. Furthermore, Applicant admits in the disclosure that it is well known in the retaining wall art to use a reinforcing horizontal tie-back sheet located between adjacent layers of blocks and adapted to extend rearwardly into an excavated area to be backfilled for retaining the wall (page 1, lines 19-22).

- b. Regarding claims 2-3, each of the sets of courses are placed on top of each other, and therefore the first set of a plurality of courses inherently must be located above or below the second set of a plurality of courses.
- c. Regarding claim 8, each unitary block comprises a front portion, two wall portions extending rearwardly from the front portion, a rear portion connected to the wall portions opposite the front portion, and a core defined by the front portion, the wall portions and the rear portion (Fig. 1).
- d. Regarding claim 9, the unitary blocks are coupled to the block assemblies of a vertically adjacent course with block connecting elements (Fig. 4).
- e. Regarding claim 10, the second set of courses comprises a first, lower course of block assemblies (9,12) and a second, upper course of block assemblies (9,12) (Fig. 4).
- f. Regarding claim 14, each block assembly has a depth that is greater than the depth of the unitary blocks (Fig. 4).
- g. Regarding claim 15, chamber containing fill material are defined between horizontally adjacent block assemblies (Fig. 4).
- h. Regarding claim 16, chambers containing fill material are defined between horizontally adjacent unitary blocks (Fig. 4).

***Response to Arguments***

- 3. Applicant's arguments filed 03/16/2007 have been fully considered but they are not persuasive. Regarding the Westbrook sales literature failing to teach or suggest a hybrid wall, the argument is not deemed not persuasive because the reference (2-WS)

Art Unit: 3635

mentions that the systems can be combined on the same wall, the reference (3-WS) depicts a hybrid wall at the fill site diagram, and the reference (2-WS) depicts different systems for the same wall at FIG. 2.3.4. Therefore, combining the systems on a wall is within the four corners of the WestBlockSystems information: 2-WS, 3-WS and 4-WS. The suggestion to combine is given by the statement that the systems can be combined on the same wall (3-WS).

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Art Unit: 3635

**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Plummer whose telephone number is (571) 272-2246. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. CHAPMAN/  
PRIMARY EXAMINER  
ART UNIT 3635

EAP

EAP